

Message Text

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TAGS: BFOL, CG

SUBJECT: OPIC INSURANCE FOR ESB ZAIRE

REFERENCES: (A) STATE 242510, (B) STATE 11992,
(C) STATE 23724, (D) KINSHASA 10691

1. POST COMMENTS REGARDING ESB INVESTMENT ARE CONTAINED IN REFTEL (D). ESB INFORMS US THAT IMPORT PROTECTION PROBLEM MENTIONED IN REFTEL (D) STILL UNRESOLVED BUT THIS SHOULD NOT PRECLUDE ISSUANCE OF OPIC INSURANCE SINCE WE ASSUME THAT COMPETITION FROM IMPORTS IS A COMMERCIAL RISK.

2. REFTEL (B) PARA. 1 INQUIRES ABOUT REPATRIATION OF CAPITAL AND PROFITS. BUREAU DES INVESTISSEMENTS INFORMS US THEY KNOW OF NO INSTANCES WHERE REPATRIATION HAS NOT BEEN PERMITTED FOR INVESTMENTS UNDER 1969 CODE, ALTHOUGH THERE HAVE BEEN FEW REQUESTS SINCE CODE INVESTMENTS ARE RELATIVELY RECENT. REPATRIATION DIFFICULTIES EXPERIENCED BY NON-CODE INVESTORS ARE INDICATED BY GREAT DISPARITY BETWEEN OFFICIAL AND UNOFFICIAL CURRENCY EXCHANGE RATES. ARTICLE 21 OF CODE GUARANTEES RIGHT TO REPATRIATE PROFIT WITHOUT SPECIFYING LIMITATION, AND CAPITAL AT CURRENT VALUE (WHICH BUREAU DES INVESTISSEMENTS INTERPRETS TO INCLUDE CAPITAL GAIN). ARTICLE 22 APPLIES SAME GUARANTEE TO PRINCIPAL AND INTEREST ON FOREIGN LOANS RELATED TO THE INVESTMENT. HOWEVER, PENDING LEGISLATION WOULD PROHIBIT REPATRIATION FOR CODE INVESTMENTS DURING TAX HOLIDAY

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PERIOD. IN ACCORDANCE WITH ARTICLE 12, ESB IS EXEMPT

FROM PAYMENT OF PROFESSIONAL (CORPORATE PROFIT) TAXES FOR A FIVE-YEAR PERIOD FROM DATE PRODUCTION BEGINS, PRESENTLY SCHEDULED FOR JULY 1974. DEPENDING ON INTERPRETATION, NEW LEGISLATION WOULD PROBABLY NOT BE APPLIED RETROACTIVELY SINCE ARTICLE 32 PROVIDES THAT INVESTMENTS PREVIOUSLY MADE UNDER CODE CANNOT BE ADVERSELY AFFECTED BY SUBSEQUENT LESS FAVORABLE LEGISLATION. WHILE IT IS DIFFICULT TO PREDICT FUTURE SITUATION WHEN ESB IS READY TO REPATRIATE PROFITS AND CAPITAL, WE BELIEVE THIS IS A REASONABLE RISK FOR OPIC TO ASSUME.

3. REFTEL (B) PARA. 2 ASKS IF ESB WILL BE AFFECTED IN ANY WAY BY CHANGES IN GOZ POLICY TOWARD FOREIGN INVESTORS SINCE NOVEMBER 30. WE DO NOT EXPECT THAT ESB WILL BE DIRECTLY AFFECTED SINCE GOZ HAS AUTOMATICALLY EXEMPTED CODE INVESTMENTS FROM ZAIRIANIZATION WITH MINOR EXCEPTIONS GOZ POLICY IS TO ALSO EXEMPT MANUFACTURING INDUSTRIES, AND THE FACT THAT THIS IS AN AMERICAN INVESTMENT IS AN ADVANTAGE. HOWEVER, IT SHOULD BE NOTED THAT THE CODE CONTAINS NO SPECIFIC GUARANTEE AGAINST EXPROPRIATION BEYOND A GENERAL REFERENCE IN ARTICLE 4 TO THE CONSTITUTIONAL GUARANTEE OF PROPERTY RIGHTS, ALTHOUGH ARTICLE 4 PROVIDES FOR ADEQUATE COMPENSATION IN CASE OF EXPROPRIATION AND ARTICLE 23 PROVIDES THAT THIS COMPENSATION CAN BE REPATRIATED. IN ANY CASE, WE BELIEVE THAT ZAIRIANIZATION OR OTHER EXPROPRIATION IS UNLIKELY. IT IS PROBABLE THAT THE ZAIRIANIZATION POLICY WILL INDIRECTLY AFFECT ESB BECAUSE OF THE EXPECTED DISRUPTION OF MARKETING CHANNELS AND TRADE CREDIT FACILITIES. THIS COULD CERTAINLY CREATE A PROBLEM FOR ESB BUT IT WOULD BE A COMMERCIAL RISK.

4. ANTICIPATED SUBSTANTIAL BENEFITS FROM THIS INVESTMENT FOR THE U.S. AND ZAIRE ARE OUTLINED IN REFTEL (D), AND THE INVESTMENT APPEARS TO BE CONSISTENT WITH OPIC OBJECTIVES. RISKS FACING ESB ARE MAINLY IN THE COMMERCIAL AREA WHICH WE ASSUME WOULD NOT BE COVERED BY INSURANCE. POST RECOMMENDS THAT

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INSURANCE BE ISSUED IN AMOUNTS REQUESTED TO COVER PARENT COMPANY INVESTMENT AND GUARANTEE OF LOCAL BANK LOAN.
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